

AN ORDINANCE

BY COUNCILPERSON CLAIR MULLER

02-0-0900

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CHANGE OF CONTROL AGREEMENT BETWEEN THE CITY OF ATLANTA, MEDIA ONE OF COLORADO, INC. , AN INDIRECT SUBSIDIARY OF AT&T CORP., AND AT&T COMCAST CORPORATION, WHEREBY THE CITY WILL CONSENT TO THE CHANGE OF CONTROL OF THE CABLE FRANCHISEE FROM AT&T CORP. TO AT&T COMCAST CORPORATION.

WHEREAS, on January 1, 1995, a Cable Franchise was granted to Southern Multimedia Communications, Inc., a predecessor of MediaOne Group, Inc. d/b/a MediaOne of Colorado ("Franchisee") for the construction, reconstruction, operation and maintenance of a cable communications system within the City of Atlanta for a period of fifteen (15) years expiring January 1, 2010 (the "Cable Franchise"); and

WHEREAS, on November 15, 1999, the City consented to the change of control of the Franchisee from Media One to AT&T Corp.; and

WHEREAS, AT&T Broadband intends to merge with Comcast Corporation to create a new corporation to be known as AT&T Comcast Corporation ("AT&T Comcast"); and

WHEREAS, on February 28, 2002, AT&T Corp. and AT&T Comcast filed all necessary materials, including an FCC Form 394 with the City of Atlanta seeking the City's consent to the proposed transaction whereby AT&T Comcast Corporation will have ultimate control over the Franchisee and the cable communications system serving the City of Atlanta; and

WHEREAS, Franchisee will operate the system and continue to hold and be responsible for performance of the Cable Franchise; and

WHEREAS, pursuant to Section 14 of the City of Atlanta Cable Communications Ordinance and Section 17 of the Cable Franchise Agreement, every change, transfer, or acquisition of ownership or control of the franchise shall make the franchise subject to revocation unless and until the City shall have consented thereto; and

WHEREAS, pursuant to Section 14 of the City of Atlanta Cable Communications Ordinance and Section 17 of the Cable Franchise Agreement, the City may impose conditions on its consent regarding technical, operating, customer service and financial aspects of the cable system as well as the transferee's acceptance of conditions related to past non-compliance with the Franchise or Ordinance; and

WHEREAS, the Department of Law, the Department of Finance, and the Mayor's Office of Marketing and Communications have reviewed the transfer application and have determined that AT&T Comcast Corporation is qualified to become the ultimate parent company of the Franchisee; and

WHEREAS, the City consents to the change of control of the Franchisee from AT&T Corp. to AT&T Comcast Corporation.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
CITY OF ATLANTA, GEORGIA AS FOLLOWS:**

SECTION ONE: That the Mayor be and is hereby authorized to execute a Change of Control Agreement between the City of Atlanta, Franchisee and AT&T Comcast Corporation which sets forth the terms and conditions of the City's consent to the change of control in a form substantially similar to the draft agreement attached hereto.

SECTION TWO: That the City Attorney be and is hereby directed to prepare the appropriate contractual agreement for execution by the Mayor, to be approved by the City Attorney as to form.

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Change of Control Agreement

By and Among

CITY OF ATLANTA, GEORGIA

MEDIA ONE OF COLORADO

AND

AT&T COMCAST CORPORATION

Table of Contents

	<u>Page</u>
CHANGE OF CONTROL AGREEMENT.....	1
RECITALS	1
1. TRANSFER OF CONTROL	2
2. RESERVATION OF RIGHTS	3
3. ACCEPTANCE OF FRANCHISE OBLIGATIONS	3
4. PAYMENT OF COSTS	5
5. REPRESENTATIONS AND WARRANTIES	5
6. BREACH	6
7. MISCELLANEOUS PROVISIONS	6

CHANGE OF CONTROL AGREEMENT

THIS CHANGE OF CONTROL AGREEMENT (the "Agreement") is made this _____ day of _____, 2002, by and among the City of Atlanta (the "City"); Media One of Colorado, Inc., duly authorized to transact business in the State of Georgia ("the Franchisee"); and AT&T Comcast Corporation, duly authorized to transact business in the State of Pennsylvania (AT&T Comcast"). The Franchisee, and AT&T Comcast may be referred to collectively herein as "Companies."

RECITALS

WHEREAS, the Franchisee currently holds a cable franchise from the City, subject to the terms and conditions of the City of Atlanta's Cable Franchise Ordinance (the "Ordinance" or the "Cable Ordinance");

WHEREAS, at the time of this Agreement, AT&T Corp. is the parent corporation and has ultimate control of the Franchisee;

WHEREAS, on February 28, 2002, AT&T Corp. and AT&T Comcast filed materials, including an FCC Form 394 (the "Application") with the City seeking the City's consent to a transaction (the "Proposed Transaction") by which AT&T Comcast. will become the parent corporation with ultimate control over the Franchisee that operates the cable television system currently serving the City (the "System");

WHEREAS, pursuant to the Ordinance, the Franchisee is required to seek the consent of the Atlanta City Council prior to the consummation of the Proposed Transaction;

WHEREAS, AT&T Corp. and AT&T Comcast have represented to the City that the Proposed Transaction will result in no change in the Franchisee, and that the Proposed Transaction will result in no change in local management or operations that will contravene Franchisee's obligations under the Ordinance;

WHEREAS, pursuant to the Ordinance, the City has reviewed, among other things, the Application and other information submitted by AT&T Corp. and AT&T Comcast and the qualifications of AT&T Comcast.

WHEREAS, the City Council has adopted an Ordinance consenting to the Proposed Transaction subject to the terms and conditions of this Change of Control Agreement.

NOW, THEREFORE, in consideration of the City's consent to the Proposed Transaction, and subject to the terms and conditions of this Agreement, **THE PARTIES DO HEREBY AGREE** as follows:

1. CHANGE OF CONTROL

- 1.1 In consideration of the promises and performances of the Companies, as expressed in this Agreement and the Application, the City will consent to the Proposed Transaction as described in the Application.
- 1.2 The Franchisee and the City reserve all rights and remedies available to each of the parties which are not expressly granted in this Agreement.
- 1.3 Neither this Agreement, nor any other action or omission by the City at or before the execution of this Agreement shall be construed to grant the City's consent to any future transfer of the Franchise and/or the System, and/or change in ownership and/or control of the Franchise and/or the System, or to mean that the City's consent to any future transaction is not required.

2. RESERVATION OF RIGHTS

2.1 The Companies agree that neither the City's consent to the Proposed Transaction nor the consummation of the Proposed Transaction shall (a) in any way waive, diminish or otherwise affect adversely any right that the City has, may have, or may at any time or in any manner subsequently acquire, with respect to any matter, including, without limitation, (1) the right of the City to require compliance with the terms of the Ordinance, and (2) the Franchisee's past compliance with the Ordinance; or (b) in any way waive, diminish or otherwise affect adversely any right, remedy, recourse or recovery the City would have had with respect to any matter, including, but not limited to, any renewal of the Franchise accruing prior to the consummation of the Proposed Transaction or to consider in any renewal breaches occurring prior to the consummation of the Proposed Transaction, and any right of the City to compensation or other remedies with respect to alleged prior breaches of the Ordinance, the Franchise Agreement or any other prior commitment made with respect to performance under the Ordinance or the Franchise Agreement, had the City's consent to the Transaction never occurred. The Franchisee shall continue to assume all existing franchise liabilities and obligations.

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS

3.1 Franchisee hereby accepts, acknowledges, and agrees that, after the Proposed Transaction, it will continue to be bound by all the commitments, duties, and

obligations, present, continuing and future, embodied in the Ordinance and that the Proposed Transaction will have no effect on these obligations.

- 3.2 Nothing in this Agreement amends or alters the Ordinance or any requirements therein in any way.
- 3.3 By the signatures below, the Companies, individually and collectively, agree that, from and after the consummation of the Proposed Transaction, they will not take any action inconsistent with the provisions set forth in the Ordinance and shall comply with (when executed and delivered) this Agreement.
- 3.4 By the signatures below, AT&T Comcast, as the ultimate owner of the Franchisee after the consummation of the Proposed Transaction, hereby confirms the certification set forth in Section V, Part II of the FCC Form 394 that Franchisee will comply with the terms of the Ordinance and applicable state laws or local ordinances and related regulations, and will effect changes, as promptly as practicable, in the operation of the System, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing. This certification shall not release the Franchisee from any obligations or liabilities under the Ordinance, whether arising prior to, simultaneously with, or subsequent to the consummation of the Proposed Transaction. AT&T Comcast acknowledges and agrees that the change of control will not affect, diminish, impair or supercede the binding nature of the existing valid ordinances, resolutions and agreements applicable to operation of the System, including but not limited to any existing guarantees.

4. PAYMENT OF COSTS

Within fifteen (15) days of the effective date of this Agreement, the Franchisee shall pay to the City the sum of \$25,000 as set forth in Section 14.3 of the Ordinance. The payments made pursuant to this Section 6 shall not be deemed to be "franchisee fees" within the meaning of Section 622 of the federal Cable Act (47 U.S.C. Section 542) and such payments shall not be deemed to be (i) "payments-in-kind" or involuntary payments chargeable against the compensation to be paid to the City by the Franchisee pursuant to the Ordinance, Or (ii) part of the compensation to be paid to the City by the Franchisee pursuant to the Ordinance.

5. REPRESENTATIONS AND WARRANTIES

Each of the Companies hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation or partnership duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized; (b) the execution and delivery of, and performance by such Company under, this Agreement are within such Company's power and authority without the joinder or consent of any other party and have been duly authorized by all requisite corporate or partnership actions on the part of such Company and are not in contravention of such Company's charter, by-laws and/or other organization documents; and (c) the execution and delivery of this Agreement do no contravene, result in a breach of, or constitute a default under, any contract or agreement to which any of them is a party or by which any of them or any of their properties may be bound (nor would such execution and delivery constitute such a default with the passage of time or the giving of notice or both), and do not violate or contravene any law, order, decree, rule, regulation, or restriction to which any of them is subject.

6. BREACH

In the event of a breach of a material terms or condition of this Agreement or any persistent failure to comply with any term or condition of this Agreement, which breach or persistent failure shall continue for more than thirty (30) days after written notice from the City, then such breach or failure shall constitute a substantial violation of a material provision of the franchise and shall entitle the City to all rights and remedies for such a violation under the Ordinance, the Franchise Agreement and under applicable law.

7. MISCELLANEOUS PROVISIONS

7.1 Information to the City. One or more of the Companies shall keep the City informed of the progress in completing the Proposed Transaction and shall promptly, within thirty (30) days, inform the City in writing when the Proposed Transaction has been consummated.

7.2 Material Changes. The Companies acknowledge that the City is approving the Proposed Transaction on the basis of the information submitted to the City in and accompanying the Application as well as information provided during the City's consideration of the Application.

If there is any material change in the Proposed Transaction or the information submitted in or with the Application or during the City's consideration thereof, or if the Proposed Transaction is not completed substantially in accordance with such submitted information, the Companies shall inform the City in writing within thirty (30) days after such material change. If the City, in its reasonable discretion, determines that (a) such material change in the Proposed Transaction

or in such submitted information has a material adverse affect on the ability of the Companies to perform fully the obligations set forth in this Agreement or the Ordinance; or (b) such material change involves the transfer of control of the Franchisee to a third party or the transfer of the franchise to a third party, then the further consent of the City shall be required.

7.3 No Waiver. Nothing in this Agreement shall be construed to waive any of the City's rights with regard to its regulatory or franchising authority, or alter the terms and conditions of the Ordinance, except as specifically provided for herein. Further, nothing in this Agreement shall be construed to waive any of the Franchisee's rights under the Ordinance or other applicable law, or alter the terms and conditions of the Ordinance, except as specifically provided for herein.

7.4 No Presumption of Renewal. It is understood and agreed by the Parties that nothing in this Agreement is intended to grant renewal of the Franchise or to create a presumption of renewal of the Franchise. It is the City's intention to proceed with the renewal process as permitted and/or required by the Ordinance and applicable law.

7.5 Effective Date. This Agreement shall not become binding upon the City and the City shall incur no obligation under same unless and until this Agreement has been approved by the City Council, signed by the Mayor, approved as to form by the City Attorney, sealed by the Municipal Clerk and delivered to the Companies. The date upon which such signing and approval are completed shall be the "Effective Date" of this Agreement.

- 7.6 Modification. No statements, promises or inducements inconsistent with this Agreement made by any party shall be valid or binding, unless in writing and executed by all parties. This Agreement may be modified only by written amendments hereto signed by all parties.
- 7.7 Binding Acceptance. This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns. Any purported assignment of this Agreement is void without the express written consent of the signatories.
- 7.8 Voluntary Agreement. This Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Agreement.
- 7.9 Severability. If any term, condition, or provision of this Agreement shall, to any extend, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.
- 7.10 Counterparts. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.
- 7.11 Governing Law. This Agreement shall be governed in all respects by the laws of the State of Georgia and any applicable City of Atlanta local laws.
- 7.12 Time of Essence. In determining whether a party has substantially complied with this Agreement, the parties agree that time is of the essence.

7.12 Captions and References. The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

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[signatures appear on the following pages]

IN WITNESS WHEREOF, the parties have executed this Change of Control Agreement
as of the date set forth above.

ATTESTS:

CITY OF ATLANTA

Municipal Clerk

By: _____

Mayor

APPROVED AS TO INTENT:

Director, Mayor's Office of
Communications

Chief Operating Officer

Chief Financial Officer

APPROVED AS TO FORM:

City Attorney

ATTESTS:

Secretary

By: _____

Name: _____

Title: _____

ATTESTS:

Secretary

By: _____

Name: _____

Title: _____